



### COMMISSIONER'S COMMENTS

G. Edward Leary, Commissioner

As we all know, the Check Clearing for the 21st Century Act ("Check 21") which was signed into law on October 28, 2003, and became effective on October 28, 2004, is designed to foster innovation in the payments system and to enhance its efficiency by reducing some of the legal impediments to check truncation.

The law facilitates check truncation by creating a new negotiable instrument called a "substitute check," which permits a bank (defined by the Check 21 Act to include insured banks, savings banks, credit unions and savings associations) to truncate original checks, to process check information electronically, and to deliver substitute checks to financial institutions that want to continue receiving paper checks.

A substitute check will be the legal equivalent of the original check and will include all the information

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### Chiefly Speaking

Michael Jones, Chief Examiner

A water bearer had two large water pots, each hung on the ends of a pole which he carried across his neck. One of the pots was perfect, while the other pot had a crack in it. At the end of the long walk from the stream to the house, the perfect pot delivered a full portion of water, while the cracked pot arrived only half full. For a full two years this went on daily, with the bearer delivering only one and a half pots of water to his house. Of course, the perfect pot was proud of its accomplishments, perfect for which it was made. But the poor cracked pot was ashamed of its own imperfection, and miserable that it was able to accomplish only half of what it had been made to do.

After two years of what the cracked pot perceived to be a bitter failure, it spoke to the water bearer one day by the stream. "I'm ashamed of myself, and I want to apologize to you. I have been able to deliver only half my load because this crack in my side causes water to leak out all the way back to your house. Because of my flaws, you have to do all of this work, and you don't get full value from your efforts," the pot said.

The bearer said to the pot, "Did you notice that there were flowers on your side of the path, but not on the other pot's side? That's because I have always known about your flaw. So, I planted flower seeds on your side of the path, and every day while we walk back, you've watered them. For two years I have been able to pick these flowers to decorate my table. Without you being just the way you are, there would not be this beauty to grace my house."

The Department of Financial Institutions regulates a wide variety of depository and financial institutions. They include state-chartered banks, credit unions, industrial banks, and savings and loan associations; check cashers, payday lenders, and title lenders; consumer credit lenders; residential first-mortgage loan servicers; third-party payment providers; independent escrow companies; trust companies; financial institutions holding companies,

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contained on the original check. The law does not require financial institutions to accept checks in electronic form nor does it require financial institutions to use the new authority granted by the Act to create substitute checks.

The Check 21 Act requires each financial institution to provide its customers or members with a notice that describes substitute checks and the rights they have when they receive substitute checks. This notice must be sent to customers or members who receive original or substitute checks with the institutions first “regularly scheduled communication” after the Check 21 Act becomes effective on October 28, 2004.

I understand that most, if not all, depository institutions have received notices and letters from their federal regulators outlining the requirements of the Check 21 Act. What concerns me is the potential adverse impact this new law may have on your customers or members. Has each financial institutions done all it can to ensure their customers or members adequately understand the new law and how it will affect them? I encourage all financial institutions to be very active with their customers or members and do all you can to ease their transition to the new way of doing business.

I have seen various communications from consumer protection groups or reviewed their websites. Customers and members appear to be very uneasy with the feared affects of Check 21 and if these changes will likely result in increased fees.

An American Banker Online article of Monday September 20, 2004 entitled “*With Month to Go Til Check 21, Some See a Fee Frenzy*” is typical of what I have read. It states that:

*“Consumer groups are worried financial institutions are licking their chops over a potential surge in bounced checks-and fee income-following the Oct. 28 implementation of the Check Processing for the 21<sup>st</sup> Century Act.*

*But some experts question how quickly consumers will feel the loss of “float.”*

*“I don’t think most people expect any magic switch flipped on come Oct. 28 that will trigger a flood of imaging and possible substitute checks,” said Kathy Thompson CUNA SVP-regulatory compliance. “The law doesn’t*

*mandate imaging, and since the great majority of credit unions already truncate, people with credit union share draft accounts are even less likely to feel the impact than bank customers.”*

*But even if check won’t be bouncing off the walls on Oct. 28, that doesn’t mean an increase in returned items isn’t in the offing, suggested Joe Gillen, founding partner of Pinnacle Financial Strategies, Houston, which provides a variety of overdraft privilege programs to banks and credit unions.*

*“It’s not going to happen overnight, but within the first six to eight months, most of the major financial institutions – say the top 25 – will be exchanging images instead of paper, and that represents 70% of the check processing arena,” Gillen offered. “We’re projecting a 20% increase in bounced checks.”*

*Consumers Union and the Consumer Federation of America have sent a joint letter to the nation’s largest banks imploring them to adopt policies that will protect consumers from the potential unintended consequences of Check 21.*

*“Consumers should get ready for an October surprise from their banks when this new check processing law is implemented,” said Gail Hillebrand, senior attorney with Consumers Union’s West Coast office. “Banks will save billions under Check 21, but consumers stand to lose out unless banks adopt new policies to protect them.”*

*The loss of float time could mean that by mid-2005 consumers could be bouncing almost seven-million more checks and paying an additional \$170 million in fees each month, Consumers Union suggested.”*

The article continues along the same lines of thought, but I think you get the point. If you have heard these concerns before, I hope you have had discussions with your management team on how you can ensure that these unintended consequences can be minimized, if not entirely eliminated for your customers or members. If you have not done so yet I would encourage your consideration of this matter.~

**Application Activity Report**  
Utah Department of Financial Institutions  
*For quarter ending September 30, 2004*

<b>Branch Approval</b>	<b>Address</b>	<b>Received</b>	<b>Status</b>
Credit Union One	1773 West North Temple, SLC UT	11/7/03	Opened 1/24/04
Horizon Credit Union	37 East 100 North, Kaysville UT	12/12/03	Approved 12/18/03
Far West Bank	822 S SR 198, Payson UT	12/12/03	Opened 8/2/04
Moroni Feed Credit Union	420 S Main, Gunnison UT	1/30/04	Opened 8/2/04
Transportation Alliance Bank	1605 E Saddleback Blvd, Ogden	3/1/04	Approved 6/18/04
Pacific Horizon Credit Union	586 N Main, Payson	6/8/04	Approved 7/7/04
Transwest Credit Union	2277 E Ft Union Blvd, Midvale	8/16/04	Approved 8/30/04
Utah Central Credit Union	5625 W 13100 S, Herriman	8/17/04	Approved 8/31/04

<b>Branch Discontinuance</b>	<b>Address</b>	<b>Received</b>	<b>Status</b>
Far West Bank	586 N Main, Payson UT	5/12/04	Closed 8/2/04

<b>Relocations</b>	<b>Address</b>	<b>Received</b>	<b>Status</b>
America West Bank	from 1010 N Hillfield Rd, Layton to 476 W Heritage Blvd, Layton	3/19/04	Approved 4/20/04
CIT Bank	from 2855 E Cottonwood Pkwy to 2180 S 1300 E #250, SLC	3/24/04	Relocated 5/22/04
Kings Peak Credit Union	from 333 E 200 N, Roosevelt to 57 N 1000 E, Roosevelt	6/10/04	Relocated 7/6/04
Wright Express Financial Services	from 5353 S 960 E #200, SLC to 3995 S 700 E, SLC	7/8/04	Relocated 8/9/04

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**Application Activity Report**  
Utah Department of Financial Institutions  
*For quarter ending September 30, 2004*

<b>De Novo Charter</b>	<b>Address</b>	<b>Received</b>	<b>Status</b>
Goldman Sachs Bank USA	295 Chipeta Way Salt Lake City UT	7/3/02	Opened 7/6/04
ComData	500 N Market Place Dr. #250 Centerville UT	8/18/03	Approved 12/19/03
Target Bank	299 S Main Suite 1300 Salt Lake City UT	12/31/03	Opened 9/27/04
GMAC Automotive Bank	6985 Union Park Center Midvale UT	2/13/04	Opened 8/2/04
Prime Alliance Bank	1870 S 500 W Woods Cross UT	7/6/04	Accepted 8/24/04
<b>Loan Production Office</b>	<b>Address</b>	<b>Received</b>	<b>Status</b>
Bank of the West	503 N 400 W, Salt Lake City	5/19/04	Approved 6/1/04
America West Bank	3340 Harrison Blvd, Ogden	5/18/04	Approved 6/1/04
Centennial Bank	St George	7/26/04	Approved 8/2/04
America West Bank	10670 S 1300 E, Sandy	8/16/04	Approved 8/24/04
Centennial Bank	147 W Election Rd, Sandy	7/26/04	Opened 8/23/04
Bank of Utah	720 S River Rd, St George	8/2/04	Opened 8/4/04

### 310 YEARS!

The following individuals, examiners and supervisors with the Utah Department of Financial Institutions, provide a combined 310 years of service to the Department. This service, and resulting experience, plays a significant role in fulfilling the Department's mission to:

"Provide quality supervision and regulation of persons, firms, corporations, associations and other business entities furnishing financial services to the people of the state of Utah."

Over 20 years of service:

David Barker  
Brent Gardner  
Lonny Stillman  
Orla Beth Peck

Over 15 years of service:

Aleta Sumner  
Young Hong  
Craig Kennedy  
Jerry Jaramillo  
Jim Thomas  
Darryle Rude  
Wayne Thompson  
Ron Romero

Over 10 years of service:

Eva Rees  
Tom Bay

Over 5 years of service:

Don Oldroyd  
Barry Myers  
Riley Bergstedt  
Shaun Berrett  
Tom Gibson  
Matt Henderson  
Melanie Anderson  
Gary Cockerham  
Bob Morgan

### Supreme Court Denies Appeal Filed by Visa and MasterCard

Darryle Rude, Supervisor of Industrial Banks

On October 4, 2004, the Supreme Court denied an appeal filed by Visa USA Inc. (Visa) and MasterCard International Inc. (MasterCard) and let stand the lower court's ruling that the credit card company's policies and rules restrain competition.

The case stems back to October of 1998, when the United States Department of Justice filed a lawsuit against Visa and MasterCard for restraining trade by adopting policies that prevented most financial institutions in the United States who were members of the Visa or MasterCard networks from issuing debit and credit card products from American Express Co. or Discover Financial Services Inc.

In October of 2001, a ruling that Visa and MasterCard had violated federal antitrust laws was handed down by United States District Court Judge Barbara S. Jones. She ruled that the policies adopted by Visa and MasterCard be revoked and allow member banks to offer alternative debit and credit card products, such as American Express and Discover cards. Jones' decision was upheld in the Second Circuit Court of Appeals in September of 2003.

This Supreme Court ruling will allow banks to offer multiple debit and credit card products from different companies, thus increasing consumer's choices and competition among the card issuers. Competition should foster innovation in the card industry and lower costs to the consumers, merchants, and perhaps even the banks. In the future, no merchant would have any reason not to accept all cards offered in the marketplace.~

### DFI Online

The Department of Financial Institutions maintains an internet website. Among the information available at the site a visitor will find: consumer tips; publications; listings of financial institutions, both depository and non-depository, located in Utah; and a listing of the status of applications of financial institutions requesting to establish or change designation in Utah. Please visit the website at: [www.dfi.utah.gov](http://www.dfi.utah.gov)

## **Regulation B – Equal Credit Opportunity Act and Spousal Signatures**

Eva Rees, Supervisor of Consumer Credit and  
Compliance

As our examiners go into depository institutions, they are seeing an increasing problem with the lender requiring the spouse to sign on a note, when the loan application was completed for individual credit. Under Reg. B, “a creditor shall not require the signature of an applicant’s spouse or other person, other than a joint applicant, on any credit instrument if the applicant qualifies under the creditor’s standards of creditworthiness for the amount and terms of the credit requested.”

This means that if a person applies for individual credit, the creditor cannot ask the spouse to sign on the note. This does not mean you, as the creditor, cannot make inquiries regarding the spouse. Under Reg. B, there are five permissible instances when the creditor may ask about the spouse, or the former spouse, of the applicant. They are when:

- 1) The spouse will be permitted to use the account.
- 2) The spouse will be contractually liable on the account.
- 3) The applicant is relying on the spouse’s income as a basis for repayment of the credit requested.
- 4) The applicant resides in a community property state or is relying on property located in such a state as a basis for repayment of the credit requested.
- 5) The applicant is relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit requested.

Let’s take a closer look at number three: “The applicant is relying on the spouse’s income as a basis for repayment of the credit requested”.

Suppose an individual comes into your institution and fills out an application for a loan. The information on the application indicates that this person wants an individual loan, the applicant’s income is listed, and the debts of the household are listed. Under this scenario, the applicant could possibly be denied because the applicant’s debt to income ratio may exceed that allowed by the institution’s policies.

The applicant is married. The applicant’s spouse is employed, and has regular income. Of course, the spouse’s income is also used to pay the household debts. When calculating the debt to income ratio, the spouse’s income may be considered, as it is used to pay the household debt. However, since the application was for individual credit, the spouse cannot be asked to sign the note.

If, during an examination, our examiners see individual applications, with the spouse’s signature on the note, the institution will be criticized in the Report of Examination for this practice.~

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and loan production offices in Utah. Each of these institutions has their own unique flaws. In many ways, they are like the cracked pot. It is their cracks and flaws (their differences) that make each depository and each financial institution interesting and rewarding. As regulators, we try to take each institution for what they are, and to look for the good in each of them.

We need to remember to appreciate the differences.~

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Please contact  
the Department  
at 801-538-8830.